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Secretary

October 7, 1996

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William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: In the Matters of Implementation of the Local
Competition Provisions of the Telecommunications
Act of 1996 et al., CC Docket No. 96-98,
CC Docket No. 95-185, NSD File No. 96-8,
CC Docket No. 92-237, and IAD File No. 94-102

Dear Secretary Caton:

Enclosed are an original and eleven copies of the
Petition for Reconsideration filed by the New York State
Department of Public Service in the above-referenced proceeding.

Respectfully submitted,

Maureen O. Helmer per [signature]

Maureen O. Helmer
General Counsel

RECEIVED

OCT - 7 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matters of)	
)	
Implementation of the Local)	CC Docket No. 96-98
Competition Provisions of the)	
Telecommunications Act of 1996)	
)	
Interconnection Between Local)	CC Docket No. 95-185
Exchange Carriers and Commercial)	
Mobile Radio Service Providers)	
)	
Area Code Relief Plan for Dallas)	NSD File No. 96-8
and Houston, Ordered by the Public)	
Utility Commission of Texas)	
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Administration of the North)	CC Docket No. 92-237
American Numbering Plan)	
)	
Proposed 708 Relief Plan and 630)	IAD File No. 94-102
Numbering Plan Area Code and)	
Ameritech-Illinois)	
)	

PETITION FOR RECONSIDERATION

FILED BY
THE NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE

Dated: October 7, 1996
Albany, New York

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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INTRODUCTION AND SUMMARY

Pursuant to 47 USCA 405 and 47 CFR 1.429, the New York State Department of Public Service (NYDPS) hereby seeks reconsideration of the Federal Communications Commission's (Commission) Second Report and Order issued August 8, 1996.¹ The

¹ In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96-98), Interconnection Between Local Exchange Carriers and
(continued...)

Second Report and Order addresses, inter alia, numbering administration and local exchange carriers' obligations to provide competitors with dialing parity.

The instant petition seeks reconsideration of three issues raised in the Second Report and Order. In its Order, the Commission adopts national dialing parity standards and imposes a 10-digit dialing rule on intra-NPA calls when an overlay code is instituted (para. 286-87).¹ This will require all customers in the geographic area served by an overlay code to dial 10-digits, even when placing a local call. NYDPS seeks reconsideration of the Commission's imposition of a 10-digit dialing rule to intrastate calls, because the Commission lacks the legal authority to require it. NYDPS also seeks reconsideration of the application of the 10-digit dialing rule for future area code overlays. Imposition of a 10-digit dialing requirement would result in unnecessary costs caused by additional holding times and inconvenience for millions of customers.

¹(...continued)

Commercial Mobile Radio Service Providers (CC Docket No. 95-185), Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas (NSD File No. 96-8), Administration of the North American Numbering Plan (CC Docket No. 92-237), and Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois (IAD File No. 94-102), Second Report and Order and Memorandum Opinion and Order, released August 8, 1996 (referred to as the Order, or Second Report and Order).

¹ Section 52.19(c)(3) says an area code overlay occurs when a new area code is introduced to serve the same geographic area as an existing area code.

The Commission identifies three options for providing number relief to prepare for the eventual exhaust of available numbers. NYDPS requests that in addition to the three, the Commission investigate and make available to the states additional options for providing number relief in the future.

I. The Commission Lacks Authority to Impose the 10-Digit Dialing Rule for Intrastate Calls

In its rules, the Commission seeks to exert jurisdiction over a matter that is properly the subject of state regulation: dialing parity for intrastate calls.

Section 51.207 of the Commission's rules provides that

A LEC shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer's or the called party's telecommunications service provider.

And Section 52.19(c)(3)(ii) of the rules states

No area code overlay may be implemented unless there exists, at the time of the implementation, mandatory ten-digit dialing for every telephone call within and between all area codes in the geographic area covered by the overlay area code.

What the Commission has done by adopting these rules is tantamount to preempting the states with regard to dialing parity for intrastate calls. However, the Commission has not met the Court's standard for preemption in this instance.

The preemption doctrine, "which has its roots in the Supremacy Clause, U.S. Const., Art. VI, cl. 2, requires [the courts] to examine Congressional intent." Fidelity Fed. Sav. and Loan Ass'n v. de la Cuesta, 458 U.S. 141, 152 (1982). The courts

have found Congressional intent to preempt state law (1) where there is an explicit statement of legislative intent to preempt, (2) where the legislative intent may be inferred from the pervasiveness of the federal regulation, or (3) where the intent may be inferred because the federal interest in the field is so dominant. Hillsborough County v. Automated Medical Laboratories, Inc., 471 US 707, 713 (1985). Thus, preemption analysis ultimately boils down to determining the will of Congress. de la Cuesta, 458 U.S. at 162.

Where federal action preempts activities traditionally regulated by the states, such as intrastate telephone service, the Court "'start[s] with the assumption that the historic police powers of the States were not to be superseded ... unless that was the clear and manifest purpose of Congress'" (emphasis added). Hillsborough, at 715 (quoting Jones v. Rath Packing Co., 430 U.S. 519, 525 (1977)).

With regard to dialing parity, the 1996 Telecommunications Act (the Act) charges all LECs with "[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service..." (Section 251(b)(3)). In the Second Report and Order, the Commission concludes that this provision "creates a duty to provide dialing parity...with respect to all telecommunications services that require dialing to route a call, and encompasses international, as well as interstate and intrastate, local and toll services" (para. 29). NYDPS does not dispute that dialing

parity is required for all of these services. However, there is no indication that Congress intended that the Commission would have authority over dialing parity for intrastate calls, in contrast to other provisions in the Act giving the Commission jurisdiction over number portability (251(b)(2)) and numbering administration (251(e)(1)). In the absence of an express indication of Congressional intent to the contrary, Section 152(b) controls, and jurisdiction over dialing patterns for intrastate calls remains with the states.

If the Commission's involvement in dialing parity is necessary pursuant to the Act, such involvement is authorized only to the extent of the Commission's jurisdiction, and the Commission may not impose dialing parity requirements for intrastate calls.

II. The Commission Should Reconsider Its Decision To Impose 10-Digit Local Dialing In Areas Served By Overlay Codes

In its Second Report and Order and Memorandum Opinion and Order concerning administration of the North American Numbering Plan, the Commission states:

To ensure that competitors, including small entities, do not suffer competitive disadvantages, we also conclude that, if a state commission chooses to implement an all-services area code overlay, it may do so subject to two conditions. Specifically, we will permit all-services overlay plans only when they include: (1) mandatory 10-digit local dialing by all customers between and within area codes in the area covered by the new code; and (2) availability to every existing telecommunications carrier, including CMRS providers, authorized to provide telephone exchange service, exchange access, or paging service in the affected

area code 90 days before the introduction of a new overlay area code, of at least one NXX in the existing area code, to be assigned during the 90-day period preceding the introduction of the overlay. (para. 286)

Further, the Commission notes that:

We are requiring mandatory 10-digit dialing for all local calls in areas served by overlays to ensure that competition will not be deterred in overlay area codes as a result of dialing disparity. Local dialing disparity would occur absent mandatory 10-digit dialing, because all existing telephone users would remain in the old area code, while new users with the overlay code would have to dial 10-digits to reach any customers in the old code. (para. 287)

The NYDPS believes that mandatory 10-digit dialing of all local calls within areas served by overlay codes will cause extreme customer inconvenience and impose additional network cost, while producing few competitive benefits. In addition to the legal prohibitions against the 10-digit dialing rule, there are practical considerations that militate against imposing this condition on the use of overlay area codes.

The Commission's decision to impose the 10-digit local dialing condition was predicated on the fear that most of the relatively few customers of new local carriers would be relegated to the new overlay code and would therefore be required to dial 10-digits to place most local calls (to the larger number of customers in the old area code), while most customers of the incumbent carrier would continue to dial the majority of their local calls (i.e., within the old area code) on a 7-digit basis. The Commission considers this a local dialing disparity, despite

the fact that all customers, regardless of carrier, would dial the same number of digits to place comparable calls (7-digits within their area code, 10-digits between area codes). To eliminate this perceived disparity, the Commission would require all customers in the area served by an overlay code to dial three additional digits to place all of their local calls. We believe the Commission's decision fails to consider adequately other mitigating factors, such as number portability, or the customer and carrier costs the 10-digit plan would impose.

First, because the Commission has required both non-discriminatory assignment of numbers in the overlay code and access to numbers in the old area code(s), the assumption that all of the competing carriers' customers will be relegated to the overlay code is erroneous. In fact, if the incumbent attracts more new customers than the new entrants do, most customers assigned numbers in the overlay code will be the incumbent's.

Second, it is likely that most of the new entrants' customers will be former customers of the incumbent. If those customers are served through service resale, they will be able to retain their existing numbers, most likely within the old area code. If those captured customers are served by the competing carrier's facilities and/or unbundled elements, they may also retain use of their existing numbers through number portability. Interim number portability, as required by the Commission, will allow callers in the old area code to dial 7-digits to reach customers actually served by the new overlay code. Long term

number portability, which is to be implemented in at least 10 of the nation's largest metropolitan areas within 18 months,¹ will allow customers to remain within their existing area codes (i.e., they will be able to dial or be dialed as if in the old code). Thus, requirements of interim number portability greatly reduce the competitive disparity the Commission's 10-digit dialing rule is meant to address, and the imminent availability of long term number portability will further mitigate any potential dialing disparity problem. The FCC's long term number portability solution will virtually eliminate the problem before any new overlay is required. Accordingly, the competitive inequity which the Commission seeks to address will be limited in both scope and duration.

On the other hand, the Commission's 10-digit intra-NPA dialing mandate will impose additional costs on carriers and cause permanent inconvenience for customers. All customers in the area served by the overlay code will be burdened with the cost and inconvenience of dialing additional digits to place all of their local calls, including those within their own area code. For example, in New York City, where an overlay code (917) was implemented in 1992, there are approximately 5.1 million access lines, and over 14 billion local calls are made on these lines each year. Most of these local calls are dialed on a 7-digit basis, including those made by customers of competing local

¹ FCC 96-286 in CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking in the Matter of Telephone Number Portability, B-10.

exchange carriers, and only those between the 212, 718 and 917 area codes are dialed on a 10-digit basis.

If the Commission's 10-digit dialing requirement is imposed on areas instituting overlay plans in the future, all customers in the geographic area served by an overlay code will have to dial 10-digits, even when placing any local call. This would unnecessarily burden all of these consumers with dialing additional digits when placing calls and will force carriers to invest in more switching equipment to handle the additional holding time occasioned by dialing 10 instead of just 7 digits on each of the over 14 billion local calls made each year in the city.

We strongly urge the FCC to reconsider its decision to require 10-digit dialing for intra-NPA local calling¹ for all overlay NPAs² because long range number portability will permit all carriers to have access to all NXXs currently used predominantly by incumbent LECs in existing NPAs. This will make NPAs competitively neutral without imposing significant additional burdens on all end users for local calling. We believe that 10-digit intra-NPA calling places a disproportionate burden on all end users and does not provide commensurate

¹ We do not ask the Commission to reconsider its decision to require all future overlay NPAs to be used on a technology-neutral basis. The Commission should, however, clarify that this provision will be enforced for prospective overlay applications only.

² It is the NYDPS's understanding that the Commission's 10-digit dialing plan would apply to future overlays, and not to the existing overlay NPA in New York.

benefits to the dynamics of a competitive market structure.

III. The Commission Should Consider Additional Number Relief Options

NYDPS requests that the Commission consider making available other methods of numbering relief beyond the three delineated in its Order.¹ NYDPS believes it would be reasonable to consider changes to the existing numbering plan format sooner rather than later, as contemplated in a proposal made by Bellcore.² Bellcore envisioned the potential use of "D" digit unblocking and/or use of an 11-digit address instead of 10 digits³ to provide number relief with the exhaust of the 640 interchangeable area codes (estimated in 1993 to be around the year 2025). It is possible that increasing telephone demand, especially for Internet and wireless services, may require these measures sooner than anticipated by Bellcore. If either change were adopted much sooner than contemplated by Bellcore, the increasing frequency of introducing additional area codes across the country would be avoided, and consumers could continue to dial local calls with a minimum number of digits.

¹ The options identified by the Commission are boundary changes to existing area codes, introducing a new area code geographically, and introducing an overlay area code.

² "North American Numbering Plan Administrator's Proposal on the Future of Numbering in World Zone 1," Second Edition, January 4, 1993.

³ Adding one digit to the existing NXX number format would increase the quantity of numbers available in each area code by an order of magnitude equal to 10 area codes while "D" digit unblocking adds 200 central office codes to each area code.

The feasibility, cost, and customer impact of such changes should be addressed in light of the increasingly frequent need to split area codes. It is possible that changing the numbering plan now could be less costly and disruptive than the totality of the frequent area code changes that are currently projected.

We believe that state commissions and the FCC share the responsibility of ensuring the availability of telephone service in the least disruptive manner to consumers. The states are most familiar with local dialing patterns and consumer impacts, and should be responsible for establishing area code boundaries, while the FCC and its designated numbering plan administrator should continuously monitor the adequacy of the existing numbering plan. Formulating area code relief plans that cause customers the least disruption while ensuring the continued availability of telephone numbers on an equitable basis to competing carriers should be the objective of both the FCC and state commissions. We request that the FCC formally investigate changes to the numbering plan that would generally minimize the number of digits customers must dial to place calls. The feasibility of eight digit telephone numbers which increase the supply of numbers 10-fold should be examined thoroughly before 10-digit dialing is mandated for local calls. In the meantime, NYDPS objects to the use of ten-digit intra-NPA dialing and strongly urges the FCC to reconsider and reverse this aspect of its decision to avoid causing extreme hardship and inconvenience

for millions of customers.

CONCLUSION

For all of the above reasons, the Commission should reconsider its rules which would improperly preempt state jurisdiction-over dialing parity for intrastate calls. The Commission should not impose 10-digit dialing in areas served by overlay codes, and should investigate and make available additional options for providing numbering relief.

Respectfully submitted,

Maureen O. Helmer for MD

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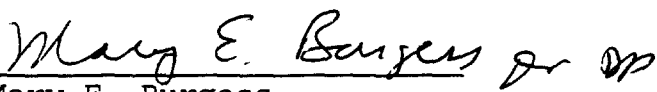
Dated: October 7, 1996
Albany, New York

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Comments of New York State
Department of Public Service

CERTIFICATE OF SERVICE

I, Mary E. Burgess, hereby certify that an original and eleven copies of the Petition for Reconsideration filed by the New York State Department of Public Service was delivered by hand to Mr. Caton. Copies of the Petition were sent by First Class United States Mail, postage prepaid, to all parties on the attached service list.


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